

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Eligibility of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2015040766

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on July 1, 2015.

Ronald R. House, Attorney at Law, represented the San Diego Regional Center (SDRC).

Claimant's mother represented claimant, who was present at the hearing.

The matter was submitted on July 1, 2015.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 31 year-old-male. On March 2, 2015, SDRC notified claimant that he was not eligible for regional center services.

2. On April 9, 2015, claimant filed a fair hearing request appealing that

decision. In his fair hearing request, he asserted he was eligible for regional center services because of the following, "my anger issues or illness, depression, anxiety which is not normal, cannot be around people I get very angry at times, I have hurt my mother before and it is not normal, outrage outbursts around people." Claimant requested that SDRC re-evaluate him to determine eligibility.

3. On May 11, 2015, the parties met for an informal meeting. At the conclusion of the informal meeting, Neil R. Kramer, M.S., Executive Director Designee, agreed to defer his decision regarding claimant's eligibility until additional records could be obtained from the San Diego County Psychiatric Hospital.

4. Additional records were obtained and reviewed by SDRC's Developmental Disability Screening Team (DDST); however, on May 28, 2015, the DDST confirmed that claimant did not meet the eligibility criteria to receive services from the SDRC. By letter dated May 29, 2015, SDRC advised claimant of its determination. Claimant disagreed with SDRC's determination, and the matter proceeded to hearing.

EVALUATION BY HARRY EISNER, PH.D

5. Harry Eisner, Ph.D., SDRC Coordinator of Psychological Services, was a member of the team that reviewed claimant's available records. Dr. Eisner prepared a report and testified about his findings.

6. Dr. Eisner reviewed the school records provided by claimant's mother. The earliest record was an Individualized Educational Plan (IEP) from Grossmont Union High School District. The IEP indicated that claimant began receiving special education services in 1997, when he was 13 years old. His qualifying condition was "Other Health Impaired," which Dr. Eisner explained is often used when children have Attention Deficit/Hyperactivity Disorder. Neither autism nor cognitive impairment were selected as qualifying disabilities. In an IEP from 1999, behavioral problems became more prominent and claimant was referred to mental health services. By 2000, claimant was

placed on home study.

7. In 2004, claimant was admitted to the San Diego County Psychiatric Hospital. He was given diagnoses of Bipolar I Disorder, manic, severe, with psychotic features; Polysubstance Dependence; and features of a personality disorder. He was hospitalized for three days and discharged with medications for manic depression (Depakote) and psychosis (Seroquel).

After discharge, claimant participated in outpatient therapy at East County Mental Health in 2005. Claimant reported substantial history of methamphetamine abuse. His diagnosis at that time was Depressive Disorder, not otherwise specified, and Amphetamine Dependence.

In 2014, claimant received a mental health evaluation from La Maestra Community Health Clinic. He was diagnosed with Major Depression, recurrent, severe; Anxiety Disorder; and Pervasive Developmental Disorder (designated for Asperger's Syndrome). Although claimant was diagnosed with Asperger's Syndrome, Dr. Eisner noted that there was no documentation supporting this assessment, and the evaluation was performed by a family therapist who may not have been qualified to make the diagnosis. Moreover, there was no indication that the evaluator reviewed any supporting documentation or childhood records, both of which are a requirement for making a proper diagnosis.

8. Dr. Eisner interviewed claimant. Claimant told him that he spends most of his time sitting outside. He does not have any friends. He easily becomes anxious and angry and sits outside to avoid the children who also live in the home. Claimant believed he was not "smart enough" to be successful in school, get a job, or function independently.

9. Dr. Eisner also interviewed claimant's mother. She described normal development up until claimant was in kindergarten, when she stated that claimant first

began having difficulties. She noted claimant began to have anger issues and would curse at the neighbors. At age seven, claimant was fighting more with other children and his teachers. He continued to receive special education until he left school at age 16, for independent study. Claimant's mother said that claimant attempted suicide in 2006 and was hospitalized.

10. Some of claimant's early behaviors described by claimant's mother, according to Dr. Eisner, could be consistent with autism, such as claimant having no friends in kindergarten, having some repetitive behaviors, and having sensory issues. However, claimant was also close to several family members and had normal speech development, which are factors not consistent with autism. Dr. Eisner explained that the school records he reviewed showed a consistent pattern of learning and mental health problems, rather than autism or developmental disabilities. Dr. Eisner noted claimant has had significant anger, anxiety, and depression for an extended time.

11. There were no records prior to age 13 to elaborate on what services claimant received during his early years. Although claimant was most recently diagnosed with Asperger's Syndrome, the diagnosis was not supported by any systematic history or evaluation. Dr. Eisner concluded the evidence did not support a finding that claimant was eligible for regional center services based upon autism.

12. Dr. Eisner also addressed whether claimant had an intellectual disability. In 1998, complainant's test scores ranged from average to well below average. Claimant's test scores remained stable and reflected overall low borderline. Dr. Eisner interpreted the results as indicating claimant had trouble learning and behavior problems, but not strongly suggestive of an intellectual disability. The variability in both the cognitive and academic skills most reflected learning disability pattern. Dr. Eisner added that claimant was already showing signs of emotional disturbances such that the accuracy of the test scores was questionable under the circumstances. No other evaluators who assessed

claimant reached the opinion that claimant had an intellectual disability. Based upon claimant's history and records, he concluded that the evidence did not support a finding that claimant was eligible for regional center services based upon an intellectual disability.

13. In addition, Dr. Eisner testified that claimant was not eligible for regional center services under the so-called "Fifth Category" because claimant's core deficiencies and treatment to address these deficiencies was not the same. (Welf. & Inst. Code, § 4512, subd. (a).) According to Dr. Eisner, the treatment he requires is similar to the treatment given persons with mental health problems, which was the treatment he received in school. Based upon claimant's history and records, Dr. Eisner concluded that the evidence did not support a finding that claimant was eligible for regional center services based upon the Fifth Category.

TESTIMONY OF CLAIMANT'S MOTHER

14. Claimant's mother testified about claimant's many behavioral issues, noting they have been increasing. She said that claimant has been doing better with some of his behavioral issues because he is on a heavy dose of Seroquel. Claimant's anger issues are the most problematic. Claimant's mother suffered an injury after claimant lashed out at her causing her to fall and break her shoulder. Claimant's mother believed that the schools did not appropriately deal with claimant's issues and provide proper treatment. She expressed her difficulty in obtaining school records, and noted she could not obtain records from when complaint first received special education services. She expressed her desire to have claimant properly diagnosed, and she believed that he has had conflicting diagnoses in the past.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

2. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. An applicant is eligible for services under the Lanterman Act if he or she can establish that he or she is suffering from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst.

Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

5. California Code of Regulations, title 17, section 54000, also defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

- (a) Developmental Disability means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.
- (b) The Developmental Disability shall:
 - (1) Originate before age eighteen;
 - (2) Be likely to continue indefinitely;
 - (3) Constitute a substantial disability for the individual as defined in the article.
- (c) Developmental Disability shall not include handicapping conditions that are:
 - (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.
 - (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

6. When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

7. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act.

EVALUATION

8. Claimant's mother believed claimant was eligible for regional center services because of his behavioral and anger issues. The Lanterman Act and applicable regulations specify the criteria an individual must meet in order to qualify for regional center services. Dr. Eisner provided a thorough and detailed explanation of claimant's records, and credibly explained why claimant did not qualify for regional center services. His testimony demonstrated that he performed a careful analysis of claimant's records and was intimately familiar with them. Dr. Eisner's testimony was persuasive, and established that claimant had solely psychiatric disorders rendering him ineligible for regional center services.

9. No competent evidence was presented at hearing to contradict Dr. Eisner's assessment that claimant is ineligible for regional center services under the autistic, intellectually disabled, or "Fifth category" categories of disabling conditions.

10. Claimant's mother was sincere, her testimony heartfelt, and her frustration

palpable. She is clearly motivated by her desire to help her child and obtain services that she believes are necessary to allow him to function in the world; she undoubtedly has her child's best interest at heart. However, the weight of the evidence demonstrated that claimant was not eligible for services under the Lanterman Act based upon a diagnosis of autism, a diagnosis of intellectual disability, or under the "Fifth" category. The weight of the evidence established that claimant did not have a condition that made him eligible for regional center services.

ORDER

Claimant's appeal from SDRC's determination that he is not eligible for regional center services and supports is denied.

DATED: July 15, 2015

ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.